

**TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
May 8, 2019**

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, May 8, 2019.

Present were: Chair Joe Blakaitis, Vice Chair Marc Murray, James Cofield, Tim McKeithan, and Sandy Whitman.

Absent: None.

Also present were: Director of Community Development Joe Heard, Council Liaison Jon Britt, and Permit Coordinator Sandy Cross.

Absent: None.

Others Present: Travis Costin, James Blose, Robert Bossert and Patti Bossert.

Chair Blakaitis called to order the Regular Meeting of the Planning Board for May 8, 2019 at 6:31 p.m.

**PUBLIC COMMENTS**

None.

**NEW BUSINESS**

**Conditional Use Permit 19-003: Application for a Conditional Use Permit to Apply the Village Commercial Development Option for Construction of a Mixed-Use Building with Studio/Showroom, Office, and Two-Bedroom Apartment at 102 Scarborough Lane**

Director Heard stated that the applicant was requesting a conditional use permit to amend a previously approved Village Commercial Development Option to accommodate the addition of a rear stairway and five foot by 24-foot deck on a mixed-use building with studio/showroom, office, and two-bedroom apartment at 102 Scarborough Lane. He noted that the rear setback was previously reduced to 17.7 feet under the Village Commercial Development Option as part of the approval of Conditional Use Permit 17-003, adding that the applicant is now requesting a further reduction of the rear setback to 12.8 feet in order to accommodate the addition of the rear stairway/deck.

Director Heard stated that the applicant has completed the first phase of the project including the renovation/expansion of the single-family residence and construction of the two-car garage on the western side of the property. He stated that the applicant was now seeking to move forward with construction of the mixed-use building on the eastern side of the property. He pointed out that when completing the final design for building, the applicant identified the need to extend the

stairway to reach the height of the second floor. He added that wrapping the stairway around the rear of the building was intended to provide the necessary stairway extension in the least obtrusive way and the 24-foot deck would serve as an amenity for the occupant or potential access to a doorway by the middle of the building.

Director Heard reminded the Planning Board that as outlined in Section 156.036(C)(6) of the Zoning Ordinance, the Village Commercial Development Option is intended to promote mixed-use development of a size, scale and architectural character that will complement the existing development of Duck Village.

Director Heard stated that the project received approval from Town Council at their December 6, 2017 meeting. He added that there is only one change being proposed from the previously approved application, which is to wrap a cantilevered set of stairs on the rear of the building. He noted that the project was approved under the Village Commercial Development option because it is a small lot on which typical development standards could not be met, and relief was granted from some of the setbacks. He stated that the building was approved to be as close as 17.7 feet from the rear and the additional stairway will be located 12.8 feet from the rear of the property. He noted that as the requested relief differs from what was granted previously, it has to be brought back to the Planning Board and Town Council to grant greater relief from the setback standards.

Director Heard stated that staff is recommending approval of the conditional use permit for the Village Commercial Development Option to permit revisions to the rear setback for construction of a mixed-use building, subject to the following conditions:

1. The proposed development must comply with all conditions previously approved for Conditional Use Permit 17-003.
2. The building must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the conditional use permit application, as prepared by Costin Creations, Inc. and dated March 20, 2019.
3. The applicant must submit revised building plans for consideration by the Building Inspector prior to issuance of a building permit for the stairway and deck.
4. This conditional use permit will expire in 18 months from the date of approval, unless construction of the proposed mixed-use building has commenced.

Travis Costin of 102 Scarborough Lane was recognized to speak. Mr. Costin reiterated that his proposal to construct the stairway in the rear setback. Member McKeithan asked if Mr. Costin is proposing to add a deck as well as the stairwell in the rear of the property. Travis Costin stated that it is mostly stairs with them wrapping around the building with a rather large landing. Chair Blakaitis noted that this is approximately five feet wide and was in the same exception area that the Board allowed previously. He stated that he did not see any issues with the project.

Vice Chair Murray moved that the Planning Board approve Conditional Use Permit 19-003 with the conditions listed in the staff report. Member Whitman seconded.

Motion carried 5-0.

## **OLD BUSINESS**

### **Discussion/Consideration of the Village Commercial Development Option**

Director Heard stated that staff prepared a draft ordinance to help the Board members identify the components of a potential Village Commercial Development Option ordinance and guide the process of developing standards for it. He noted that even though the draft ordinance contains specific standards that may be considered by the Board, the intent is not to focus on the standards, but to review the components to the draft ordinance in order to better understand what types of standards may be adopted.

Director Heard explained that the Village Commercial Development Option process is intended to consider flexibility with development standards in situations where the resulting development is consistent with the desired scale and character of development in Duck Village. He added that special exceptions are available to provide relief from development standards in certain situations and the Village Commercial Development Option approval process fits better as a special exception than a conditional use permit which deals with consideration of uses.

Director Heard noted that Town Attorney Robert Hobbs and staff were recommending removing the current Subsection 156.036(C)(6) from the list of conditional uses in the Village Commercial zoning district and creating a new Section 156.065 entitled, "Special Exception: Village Commercial Development Option" containing the standards and applicable information related to the Village Commercial Development Option.

Director Heard stated that under the current Village Commercial Development Option, the Council has broad discretion in providing an applicant with reductions in requirements for parking, setbacks, and other development standards. He added that there were few limitations on the ability to reduce the requirements under the Village Commercial Development Option and that Council could presently grant any amount of relief to the applicant. He pointed out that a vast majority of prior Village Commercial Development Option requests were approved for relief from parking or setback requirements, but several were granted flexibility from other types of standards including driveway separation distance, drive aisle width, and landscape buffers. He stated that some discussion points for the Board to consider were as follows:

- Should relief be granted only from certain types of standards?
- Should limitations be placed on the amount of relief to be granted and if so, how much?
- Are properties with existing violations eligible to apply for Village Commercial Development Option relief? Should the Village Commercial Development Option be used to resolve existing violations?

Director Heard stated that the current Village Commercial Development Option ordinance gives Council broad discretion to approve a Village Commercial Development Option application after considering a limited number of non-specific and not necessarily objective criteria. He noted that under the current Village Commercial Development Option, there were few objective criteria which must be met for an applicant to obtain modifications of requirements that other development projects in the Village Commercial district have to meet. He added that the Board may wish to consider a list of factors which may weigh in favor of or against an application. He

stated that the current Village Commercial Development Option standards require the Council to consider (1) goals and policies of the CAMA Land Use Plan; (2) building design guidelines; and (3) conditional use permit requirements. He stated that the Purpose section of the Village Commercial Development Options standards mentions the following items, even though it was not expressly stated that a proposal must be consistent with these factors:

- Encourage shared parking
- Limit vehicular access and accommodate pedestrians
- Promote mixed land uses
- Scale and architectural character complementing Duck Village

Director Heard stated that the Town Attorney was recommending that the Planning Board create standards for when the Village Commercial Development Option could be applied to a development proposal. He stated that the applicant should have the burden of proving that he/she was entitled to a special exception by addressing the standards for approval.

Director Heard explained that the general intent of the Village Commercial Development Option was that the proposed development should be consistent or enhance the character of Duck Village. He stated that in order to quantify the compliance, the Board could adopt other criteria as guidelines or standards or approval of a Village Commercial Development Option application. The criteria could include the following:

1. Mixed uses, particularly employee housing
2. Building design consistent with Duck Village character and Section 156.111
3. Building location – near the front of the property, preserve important site features
4. Lot coverage – minimize lot coverage, enhance stormwater drainage or filtration
5. Parking – minimize parking in front and enhance the landscaping
6. Pedestrian orientation – connection to the sidewalk or boardwalk, convenient location
7. Bicycle friendly – connection to the bike path, provision of bicycle equipment and amenities
8. Connections – vehicle or pedestrian connections between properties
9. Trees and vegetation – preservation of significant vegetation, exceed planting and buffer requirements
10. Preservation of historic structures
11. Public amenities – addition of water fountains, benches, etc.
12. Public infrastructure – installation of sidewalks, stormwater improvements, etc.

Director Heard noted that some discussion points for the Board could be (1) should the criteria be standards (must do) or guidelines (may do)? (2) should more weight be placed on certain criteria than others? (3) is a point system an appropriate way to measure compliance? (4) how should the criteria be applied to existing situations? He pointed out that the binder of information that was handed out to the Board members at their April 10, 2019 meeting contained relevant ordinances from four different communities in North Carolina. He added that although none were used in the same manner as the Village Commercial Development Option, they did provide insights into the different types of criteria that could be used and how other communities evaluate consistency with guidelines and standards. He thought the Board members could draw from those ideas from the other communities for consideration in the ordinance for Duck.

Chair Blakaitis asked if the draft ordinance is in the Board's agenda packet. Director Heard responded that it is. Chair Blakaitis suggested that the Board start with criteria for the discussion, adding that there are a lot of items to consider.

Vice Chair Murray asked if the Board should go through the criteria in the order that was presented in the staff report. Chair Blakaitis stated he is fine with doing that. Chair Blakaitis asked if the Board should start with the policy. Vice Chair Murray thought the Board could start with the Specific Criteria, adding that the General Findings are a description of what the Town currently has in place. Director Heard stated that they are similar to what is presently in the ordinance. Vice Chair Murray thought the Board can start reviewing the Specific Criteria. Chair Blakaitis noted that the Board has already sent to Council the main idea behind the whole thing. Director Heard stated that the Board made recommendations regarding conditional use permit criteria in general for any conditional use, which is a separate issue unrelated to this discussion.

Member Cofield stated that he likes the approach of standards rather than mere suggestions where possible. He thought what is in front of the Board is a good exercise, but it is difficult to talk about specifics when the Board does not have the specific criteria in front of them. He stated that he is at a loss for going deeper into a discussion, but where the standards are applicable, he would like to see standards that set out some minimal criteria. He thought if it isn't done, it will leave the Board and the Town open for anything. He stated that commercial properties should meet some standards.

Chair Blakaitis agreed with Member Cofield. He noted that Director Heard has drafted some possible criteria, which could be a place for the Board to start, because applicable standards are listed and the Board can decide if they agree with those type of standards. Member Cofield agreed. Chair Blakaitis asked if the rest of the Board members were fine with that. Vice Chair Murray stated that he is struggling with using the draft ordinance for formatting purposes only. He stated that the format works fine if the Board is going to go over individual requirements as listed. He is trying to organize the conversation. Chair Blakaitis noted that he is getting confused when he goes back to the beginning and starts with the Specific Criteria and having to pull them out. Vice Chair Murray stated that the Board can use the draft ordinance as an outline for the conversation. Chair Blakaitis thought it is a good idea.

Member Cofield thought Director Heard can remind the Board as to how and where the specifics differ from the existing ordinance. Director Heard stated that the Board is looking at Section B entitled "Applicability". He explained that one of the concerns expressed by the Town Attorney was that the Town may want to consider setting some kind of limitations on when the Village Commercial Development Option can be applied. He noted that the current ordinance does not have standards as to what relief an applicant can ask for or the amount of relief that can be granted. He stated that an ordinance could set minimum standards that the Town thinks would be too extreme and should not be granted. He stated that the question is whether the Board wants to place limitations on what will be eligible for consideration.

Chair Blakaitis thought that is where the Board got into trouble the first time. He thought the list in front of the Board with standards that have limitations is a good place to start. He thought it

also fulfills what Member Cofield was suggesting. He added that the Board can add or subtract from it and suggested starting under the “Applicability” section.

Member Cofield asked if during its the review of the Parker House Restaurant, the Board approved any setbacks beyond 50% for the project. Director Heard stated that no building setback relief was requested or granted, but parking setbacks and the number of parking spaces were discussed and approved. Vice Chair Murray pointed out that the location of the building was allowed because prior development allowed it to be in the CAMA setback to begin with. Director Heard clarified that it was CAMA requirement and not a Town requirement, adding that the Town didn’t have any issues with the setbacks. Vice Chair Murray asked what the rear setback is on the property. Director Heard stated that he would have to look at the plans to know exactly.

Vice Chair Murray thought, in ordinance form, the draft ordinance looks good with regard to the minimum structure setback not being reduced by more than 50%. He thought the percentage may be changed as the Board discusses it. He warned the Board that they don’t know what needs may be for a specific applicant, especially considering there are lots that exist that are extremely small. An applicant could ask for 52% reduction as the only concession on the application, and the project would be denied based on that one item. He reminded the Board that as frustrating as the process currently is, it gives Town Council the discretion to make various site and project-specific relief for people. He felt that even if the Board comes up with new limitations, they are hamstringing themselves in the ability to give and take with applicants to get the development that is consistent with what is wanted in Town.

Chair Blakaitis stated that there need to be some limits set. He noted that Vice Chair Murray made a good point but added that he was implying that the Town should stick with what is already in place. Vice Chair Murray wasn’t sure if the Board should stay with what is in place, but he is more inclined to go with more guidelines than regulations as a transition from an ordinance without any parameters to an ordinance with a lot of definite parameters as the Board cannot foresee the consequences. He stated that he likes the scoring system option that is mentioned in the staff report. Chair Blakaitis asked for clarification that Vice Chair Murray is in favor of guidelines that can be changed as things moved forward. Vice Chair Murray stated that he is more comfortable with that approach. He felt it is moving the ordinance in an incremental direction. He noted that when the Town was founded, the desire for flexibility was put in the Village Commercial Development Option. He added that it may have been too lenient and he agreed that some standards and guidelines will be helpful, but he would like to see it move more incrementally.

Member Cofield thought standards are required with what the Board is doing. He added that there are a number of options available to a property owner with respect to building a new structure or renovating an existing one. He stated that the fact that a homeowner cannot build close to a property line does not mean that the owner cannot build. He added that there are other options for changing the character of the building. He stated that there are never no options. He stated that once someone understands the desires of the Town through its building codes, then he can try to design their building or construction with the ordinances that the Town has in place. He stated that after some discussion, the Planning Board and the owner of the Parker House Restaurant agreed to push the building closer to the sound because of some of things that were

discussed, which was an option that the owner did not decide on his own, but after the discussion with the Planning Board, that option was available to him. He reiterated that there is no structure that cannot be altered if the property owner wants to build on the property. He added that it may require less square footage. He didn't think it is a problem for the Town or that it is too onerous on an owner that wants to build on a small site. He disagreed with the notion that the Town should not have standards, reiterating that there are almost always options available to a property owner.

Vice Chair Murray understood Member Cofield's point, but noted that the Town does have standards. He explained that the Village Commercial has development ordinances and an applicant can just apply for a conditional use permit, meet the requirements, and be approved. He noted that it happens typically on larger lots where there is space to do it. He stated that with regard to the Parker House Restaurant, Council had asked for them to move the building and add more parking. He added that the negotiation is allowed by the current ordinance and the way it is written. He agreed with Member Cofield that an applicant always has options. He pointed out that the Sanderling Inn wanted to add on to the building and sought out a text amendment to change the building height ordinance, which was denied by Council. He stated that they went back and did the exact same development with a shallower pitched roof. He stated that the regulation accomplished nothing except for creating an odd-looking roof.

Member Cofield disagreed with Vice Chair Murray, noting that the regulation did accomplish what the Town desired in that instance. He added that when the Town told the Sanderling Inn no, they came back in with a design that fit the criteria. Vice Chair Murray agreed, but there is no reduction in the intensity of the use of the property, no preservation of the viewshed, and no better compliance with the CAMA Land Use Plan. Member Cofield pointed out that the Town was not seeking to achieve any of that. Vice Chair Murray asked why the Town had ordinances. Member Cofield stated that the Town was seeking to achieve a reduction in the height of the building, which was achieved as well as the hotel getting built. Vice Chair Murray agreed, adding that the argument could be made that, architecturally speaking, it is a less attractive package because of the ordinance. He stated that as the Village Commercial Development Option currently exists, the Town has a say in it as there is a negotiation between the applicant and the boards when the applicant applies. He stated that he worries that relying entirely on standards will take away any "horse-trading" option.

Member Cofield stated that Vice Chair Murray is arguing his point. He stated that there may be no give on some items, but on some of the other criteria, there could be give and take. Vice Chair Murray asked how it would decide what is important to the applicant on a project before the Board even sees it. Member Cofield thought the Board has to decide what is important for the Town. He added that the Town must establish the ordinances and the applicant who desires to build in the Town must work with the ordinances that exist. He stated that more often than not, the builder/developer decides that they want to build in Duck within the parameters that the Town established. He noted that if they do not, then they can go build somewhere else.

Vice Chair Murray did not understand how a guideline process to encourage a builder to do things will not be the better option. He stated that the way the draft ordinance was written with minimum structure setbacks cannot be reduced by more than 50%, the Board would be debating the percentage. He stated that his argument is that the percentage is arbitrary as the Board cannot

say what the Town wants in a percentage, which is why he feels that guidelines and scoring can potentially be better options than hard and fast regulations. He stated that he understands if Member Cofield wants to structure the debate or the negotiations between the applicant and the Town, but he does not understand how the Town dictates standards to them.

Chair Blakaitis pointed out that the Board is discussing philosophy. He stated that Member Cofield was discussing what the Board has been asked to do. He stated that Vice Chair Murray is suggesting that the Board should not do anything over what was already in place because it is working. He noted that he isn't arguing with either member but thought that is what he is hearing from them. He asked what the Board wants to discuss.

Vice Chair Murray felt that whatever the Board does could be guidelines to start. Chair Blakaitis agreed, adding that the Board needs to start somewhere. Vice Chair Murray agreed, asking if the Board is discussing guidelines or requirements. Chair Blakaitis thought it was a good question. Vice Chair Murray asked if guidelines are off the table. He noted that other than himself and Member Cofield, no other Board member has commented. He noted that one Board member is in favor of regulations and another is in favor of guidelines or potentially a scoring system.

Director Heard commented that the Board may be jumping the gun on things. He stated that the applicability section that the Board is discussing is not intended to be a guideline. He explained that the potential guidelines relate to the specific development criteria when the Board gets further along in the ordinance. He added that the applicability section defines the minimum standards. He stated that the numbers are what the Board and Town Council choose to limit. He explained that where the Board will get into the debate about guidelines will be when the Board starts discussing the specific criteria.

Chair Blakaitis asked for an example about how the applicability criteria are used. Director Heard stated that if a proposal complies with the applicability, then the findings will be looked at next. He explained that the Planning Board and Town Council, there will consider broader-based findings similar to those in the draft ordinance. He noted that they are general in nature but give Council an overriding sense of whether the proposal complies with the intent and spirit of the ordinance. He pointed out that under General Criteria, Subsection 4 reads as follows: "The subject property and development proposal include a substantial number of specific criteria outlined in Section 156.065(D)." He stated that Section D will involve going into the specific criteria. He noted that he did not put a figure, number or scoring system in the draft ordinance but the Board could set it up in any of those ways. He pointed out that under Specific Criteria, if each one was assigned 10 points, then Subsection 4 under Specific Criteria could state the following: "...the proposal needs to score at least XX points..." He noted that the number of points would ensure the level of compliance that needs to be met. He added that if they are guidelines, it could state the following: "...the proposal substantially complies with the guidelines under the specific criteria..." He stated that guidelines are a more subjective way of looking at projects and allow greater flexibility for the Board and Council. Chair Blakaitis thought it was still confusing to him.

Member McKeithan asked if an applicant scores well under the Specific Criteria, would it give the applicant more weight on obtaining an exception to a standard such as the minimum structure setback not being able to exceed 50%. Vice Chair Murray pointed out that no matter how well



an applicant scores, the applicability is a must. Member McKeithan clarified that if an applicant does not do well on the criteria, the applicant may not get the proposal approved. Director Heard stated he is correct, noting that the applicant would not receive even 10% if the development proposal and the property do not meet enough of the criteria. He noted that it is up to the Planning Board and Town Council to figure out how they want to set it up. He added that there are a lot of options on how to do it such as a scoring system where an applicant has to meet a certain number of criteria.

Member Cofield pointed out that without putting a scoring system on the 12 points listed under Specific Criteria, those are guidelines. He thought the way Director Heard had it set up was appropriate. He added that there are some things that need to be hard and fast. He stated that the Board can differ about what the number or percentage is, but if the Board makes everything a guideline, then there is no point in the Board discussing the issue.

Vice Chair Murray wasn't sure if there is no point in discussing the issue. He stated that in looking at Applicability, he has no issue with Subsection 7, which was discussed at the Board's last meeting. He added that he doesn't have much of an issue with Subsection 6 but feels that if someone comes up with a use that isn't listed, they can apply for a text amendment which will be easy to deal with. He stated that with regard to building size or height, it is obvious that height increases will not be permitted and building size is odd because the Board approved that for Village Table and Tavern. He noted that it was reasonable to approve that building size for Village Table because it was on a very large lot. Director Heard stated that it was not approved as a Village Commercial Development Option. He explained that 5,000 square feet is the base standard but with a conditional use permit, buildings can be as large as 10,000 square feet in the Village Commercial district. Vice Chair Murray noted that height limitations are dear to everyone, so it should be kept in the draft ordinance.

Vice Chair Murray stated that because an opaque fence is given as an option, the landscape buffer criteria seem fine to him. He thought it is hard not to get bogged down on things when setbacks are one of the main things that the Board deals with in relation to the Village Commercial Development Option. He wasn't sure if he is comfortable with that being in Section B as he felt it could be in Section D. Chair Blakaitis asked how it would work in Section D. He further asked if it would be a guideline instead of a requirement. Vice Chair Murray stated that it would depend on how the Board formats Section D. Chair Blakaitis stated that he would prefer leaving it where it is in the draft ordinance. He found it hard to remember a large setback reduction approval in all the years he's been on the Planning Board. Council Liaison Britt agreed. Chair Blakaitis stated that even if the Board leaves the 50%, it will be fine.

Chair Blakaitis stated that the Board has to develop something and can make it more if needed. Council Liaison Britt noted that Council did not say that they want more standards, rather they felt it is time to look at and re-evaluate a 12-15-year-old ordinance. He stated that no one says there need to be standards put in it. He thought some of the draft ordinance is good, but some isn't. He reiterated that Council did not say they want some definite standards. He stated that some of the comments from the Town Attorney were appropriate as far as changing to the special exception process. Director Heard clarified that some of the comments came from the Town Attorneys and not at the direction of Town Council. Council Liaison Britt stated that the standard comments did not come from Town Council. He added that Council felt it was an old

ordinance that needs to be looked at. Chair Blakaitis pointed out that the Board is now looking at it. He stated that he does not see the Board having to follow every suggestion that the Town Attorney makes. He added that the Board needs to know what direction it wants to go.

Member McKeithan stated that he is in favor of establishing some standards. He stated that there are existing setbacks with 20 feet in the rear and 15 feet in the front. He stated that he looks at those standards as the rule unless there is some reason to change it. He stated that the Board is looking at exceptions and he thinks that the Board should be setting some minimum standards. Chair Blakaitis reminded Member McKeithan that the Board is taking what already existed and making a part of it a little more rigid. He added that there are already many standards in place.

Chair Blakaitis asked the Board members how many want to have some standards. All five Board members raised their hands. Chair Blakaitis thought the Board should come up with some standards, adding that there may not be a need for certain ones, but at least a few to start with. He added that the Board can start out slower by having fewer standards. Vice Chair Murray stated he is fine with that approach.

Member Cofield thought that following the outline that Director Heard presented is a good way to start. He thought that the Board may want to look at how much of a variance it wants to allow from the standards and whether the Board wants certain standards or not. He reiterated that the Board should follow what Director Heard presented. He added that the issue for him is not to throw away the Town standards, but how much variance the Town wants to allow from the Town's already established standards.

Chair Blakaitis suggested the following language: "...maximum variance in structure standards for setbacks can be no more than 50%..." Member Cofield thought it was a good suggestion. Chair Blakaitis suggested the following language: "...maximum variation from lot coverage..." He wondered why lot coverage is in the ordinance. He asked why an exception would be allowed for lot coverage as it's not done very often. Director Heard stated that it has been done before. He added that the maximum lot coverage standard is 60% under the current ordinance, which is fairly substantial. Chair Blakaitis didn't think there have been very many cases where it was allowed. Council Liaison Britt thought Duck Village Outfitters had a coverage issue. Director Heard stated that Roadside Bar & Grill was also originally over lot coverage. Chair Blakaitis didn't think it necessarily had to be put in the draft ordinance. He thought the list can be shortened. Director Heard commented that the Board doesn't have to include it at all. Vice Chair Murray agreed that the Board still has to look at it. Chair Blakaitis stated that the Board does not need to list it. Member McKeithan suggested removing it.

Vice Chair Murray stated that if the Board is in agreement regarding the setback that there needs to be a percentage put on it, then there needs to be a percentage of the depth of the lot or the width of the lot additionally. Chair Blakaitis asked how it would be worded in the ordinance. Vice Chair Murray suggested the following language: "...the minimum structure setbacks cannot be reduced more than 50% or X percentage of the depth or width of the lot..." He noted that the Board is not supposed to be discussing it. Director Heard stated that the ordinance can be as detailed as the Board wants it to be. Chair Blakaitis stated that the Board can discuss it as much as they want, but he thought it makes it more complicated. Vice Chair Murray agreed, adding that it deals with the reason that someone may need the relief. Chair Blakaitis pointed out that it

can be easily figured out when the application is in front of the Board. Vice Chair Murray disagreed, noting that it will not be if the Board sets a firm standard of 50%. Chair Blakaitis stated he is referencing the lot width.

Director Heard stated that prior to the Town's incorporation, Dare County had a rear setback of 20% of the depth of the lot. He noted that that is similar to what Vice Chair Murray is referring to. Vice Chair Murray explained that if the Board is going to put a percentage of allowable reduction, it needs to be either 50% or X, whichever is less limiting or whichever is more limiting. Director Heard stated that Subsection 3 is worded that way related to the number of parking spaces. He stated that the Board could word it in a similar way related to setbacks if they choose to do so.

Member Cofield noted that Subsection 2 states that following: "Maximum lot coverage can be increased by no more than 10%." He stated that if that is something that the Board wants to remove from the draft ordinance, it will create other issues for parking and setbacks. He stated that if lot coverage is removed, it will create more onerous standards for parking and setbacks. Chair Blakaitis asked how it would since there are still basic lot coverage standards for the Village Commercial district. Member Cofield understood, adding that he thinks the option that Director Heard suggested is that it be removed completely from the draft ordinance. Chair Blakaitis stated that the Board is not changing the ordinance of the Town. Member Cofield stated that if it isn't in the ordinance, then the owner must still comply with the other conditions. Chair Blakaitis agreed, adding that it may shorten the list for the Board and make what's in it more important. Member Cofield asked Vice Chair Murray if he is comfortable with it.

Vice Chair Murray stated that it could be removed. He felt that an either/or is better in that if someone could have an engineer demonstrate that they could have 65% lot coverage and handle a five-inch rain event instead of a 2.5-inch rain event, then they should be allowed to do it. Chair Blakaitis noted that they can still do it even if it is taken out of the ordinance. Vice Chair Murray disagreed, noting that if it is taken out, they will not be allowed any variance for lot coverage. He stated that it makes sense as the Town does not want to allow more lot coverage, but the reason the Town has lot coverage is due to stormwater management. He stated that if someone is willing to invest the money to maintain more stormwater on their site in exchange for 5-10% more lot coverage, he felt it is a good compromise for the Town to make. Chair Blakaitis asked if it can be done now. Member Cofield stated that they can get a special permit for residential. Vice Chair Murray noted that it is one item out of thousands of permutations. He wasn't sure how the Board will be able to think of them all without giving people the option that if they are willing to do a certain thing, the Town will be open to discuss it.

Member Cofield asked if Vice Chair Murray is arguing to leave Subsection 2 in or out of the draft ordinance. Chair Blakaitis thought Vice Chair Murray wants to leave it in. Director Heard thought it was clarified earlier, but if the Board decides to strike Subsection 2 and not put anything else in, it will mean that a person is eligible to request 100% lot coverage with no limitations. He thought the clarification was that the Board is not just taking it out, but also adding it in under Subsection 5 to things that will not be permitted, which means it would stay at 60%. Member Cofield thought by striking it, there will not be any regulation. He added that the answer he heard is that they will have to comply with the Town standards. Chair Blakaitis stated that they would also have to seek an exception.

Vice Chair Murray asked if someone applies for a special exception for something that is explicitly prohibited, can they apply for a variance or is it simply prohibited. Director Heard stated that it would be prohibited. Based on the clarification, Member Cofield thought that all the Board members would want to leave Subsection 2 in the draft ordinance. Chair Blakaitis agreed.

Vice Chair Murray asked if it should be left in or have the wording read as follows: "...maximum lot coverage cannot be increased..." Director Heard stated that if the Board wants maximum lot coverage at 60% with no increase ever, then it should be added to Subsection 5 under things that are not permitted. In that scenario, Subsection 2 would be removed and added to Subsection 5. He stated that if the Board wants to create an allowance of up to 10% for lot coverage, Subsection 2 could be left in. Vice Chair Murray stated that his point is that 10%, 11% or 12% is arbitrary. He added that if the Board wants to make an allowance, the allowance should be that they up the lot coverage based on the size of the rain event that can be contained on the site. Chair Blakaitis pointed out that it always comes to before the Board when an application is submitted. Vice Chair Murray agreed, asking what the current stormwater guideline was for a rain event. Vice Chair Murray thought it was 2.5 inches. Council Liaison Britt agreed.

Member Cofield asked if the Town has approved additional lot coverage for stormwater mitigation on a residential property. Director Heard stated that the Town has a specific allowance for residential properties up to 35%. Member Cofield noted that it isn't a lot of difference. Director Heard stated that the Town receives one or two per year that staff reviews. Vice Chair Murray noted that the bottom line is when someone does that, the stormwater on their property has been looked at by a design professional as opposed to just meeting the minimum requirement. He added that it is conceivable with the basic 30% lot coverage the lot could be configured in such a way that doesn't retain any stormwater. Member Cofield agreed. Vice Chair Murray thought it is a good reason to encourage people with the carrot and stick approach. Chair Blakaitis agreed.

Director Heard asked if he is hearing a consensus from the Board members that they would like to add in something of the nature of what Vice Chair Murray was suggesting, similar to the wording for the residential section with an engineer designed stormwater management plan. He wants to be sure if the Board is in consensus about this concept. If so, he stated that staff will work on the wording as this is not the current draft.

Member Cofield noted that Council Liaison Britt had commented that lot coverage encompassed more than stormwater mitigation. He noted that it is a major part of what the Board looks at, but it encompasses more than stormwater mitigation. Chair Blakaitis agreed. Member Cofield wasn't sure how to change it. Vice Chair Murray thought it is for consistency. Council Liaison Britt agreed. Chair Blakaitis opined that the Applicability list should be left in the draft ordinance as is. Vice Chair Murray stated that the Board could change the wording of Subsection 2 to something more similar to the residential ordinance. It was the *consensus* of the Board to change the wording.

Chair Blakaitis stated that the Board is discussing earlier the percentage of the lot coverage. Member Cofield suggested leaving Subsection 1 as is and for Subsection 2, if the Board is going to add either/or criteria mimicking the residential piece, he thought there should be something regarding landscaping and tree coverage as lot coverage is more than stormwater mitigation. Vice Chair Murray thought it could be required that it be a low impact development stormwater plan as opposed to a conventional plan, which will deal with the concerns of Member Cofield. Director Heard noted that the Board will have plenty of chances to look at the draft ordinance and become comfortable with it as the discussion moves along.

Vice Chair Murray noted that the rest of the ordinance is not particularly controversial. He asked for an explanation about the 5,000 square feet for the guideline. Director Heard stated that an applicant can obtain a conditional use to build something up to 10,000 square feet in the Village Commercial district. He stated that a building is a use of right up to 5,000 square feet. Vice Chair Murray clarified that the ordinance will be capping it at 10,000 square feet. Director Heard stated he is correct, adding that someone cannot use this tool to get around the 10,000 square foot limitation. Chair Blakaitis noted it is the same thing with Subsection 2 as that rule cannot be used to get around what was already in existence as a standard in Town. Vice Chair Murray agreed, adding that it isn't the consensus of the Board. Chair Blakaitis and Vice Chair Murray agreed it was the same thing of the part of the discussion the Board had about Subsection 2.

Vice Chair Murray suggested the following wording: "...the proposed use must be consistent with the list of permitted uses." He asked if it meant that it had to be on the list and consistent with it. Director Heard stated he is correct. Member Cofield noted that it means no exceptions. Vice Chair Murray asked if it should read as follows: "...the proposed use must be included in the list of permitted uses..." Director Heard stated that it is fine. Vice Chair Murray stated that, consistent with the list of permitted uses, it seems that there could be a use that was closely related. Council Liaison Britt agreed.

Director Heard asked if there are any changes to Subsection 1 or 3 in the draft ordinance. Chair Blakaitis stated that the Board did not discuss Subsection 3 and thought the Board agreed that Subsection 1 should remain as it is written because Subsection 2 is to be left in the draft ordinance. He noted that the Board did not discuss parking.

Member McKeithan asked for an explanation on the following wording in Subsection 3: "...reduction in the amount of required parking for the site is limited to a maximum of five..." He asked if it was a reduction of five or down to a number, such as five parking spaces. Director Heard stated that the reduction is limited to five. He added that the amount of the reduction would be five spaces or up to 20% of the minimum parking requirement on the site. He explained that if there is a larger site, the owner could request a reduction of more than five parking spaces. He added that if the requirement is 100 parking spaces, the owner could request a reduction of 20, but if it is a smaller lot, the owner could not request any more than five spaces. Member McKeithan stated that if there are eight parking spaces and the owner received a reduction of five, they would be down to three parking spaces. He added that a 20% reduction would put it down to six. He thought going from eight to three is too much and proposed the following wording: "...whichever is lesser..." Member Cofield agreed. Member McKeithan

stated that it shouldn't go from eight parking spaces to three, but eight to six parking spaces. He added that it is too big of a reduction.

Vice Chair Murray thought the comment from Member McKeithan makes sense but suggested that it should be removed from the list as he feels the Board should review parking as a whole. He thought the parking arrangements seem to be very lax with shared parking and parking reductions that the Town was doing as well as allowing bicycle racks. He added that applicants are coming in and saying that everyone either bikes or walks to their business. He felt that there needs to be some data about it and parking issues need a more complete review. He stated he is fine if it stays on the list. Member McKeithan stated that the Board knows that parking is an issue and if the Town is giving an establishment relief, he thinks it needs to have some limits. He thought that reducing eight spaces down to three is too much. Vice Chair Murray agreed that if it is to remain in the ordinance, it should say lesser rather than greater. Director Heard noted that simply changing the wording to "lesser" means that five will be the magic number nearly every single time. He explained that if an owner is required to have 200 parking spaces, they could only request a reduction to 195 parking spaces. Member McKeithan pointed out that the lower end would offer too much relief. Director Heard stated that there are not a lot of those properties. He reminded the Board that they are talking about very miniscule numbers to begin with. He noted that most of the lots in Duck Village are larger ones and people will not under-develop commercial property with the cost of the properties. He added that staff can amend the draft by adding a flipside in the ordinance if the Board wishes. Member McKeithan thought it could be 10, but still leave in the 20%. He reiterated his concerns about granting too much relief on smaller properties.

Vice Chair Murray asked about the issue with parking and the problem with a walkup business not having a parking space. Member McKeithan stated that if another business is added, there will not be enough parking for the people and they will go to another business to find a parking space. Chair Blakaitis agreed. He agreed with Vice Chair Murray that parking should be left out of the draft ordinance and have the Board discuss it at a future meeting. He thought parking is such a problem in Duck that the Board should forget about it. Member McKeithan stated that the premise behind that is before more expansion can be allowed, the facility needs to make some arrangements to take care of the additional parking that they create. Chair Blakaitis disagreed. Vice Chair Murray pointed out that all that would happen will be more vehicles in Town. He added that the Town has invested millions of dollars to make it comfortable for people to walk throughout Duck. He stated that more vehicles will make it harder to walk and ADA parking is a critical need. He stated that for people that have no problem walking or biking in Town, less parking will encourage them to use the pedestrian amenities. He wondered why it is a bad thing. Member McKeithan asked where they will park. Vice Chair Murray stated that they can park at their home and either ride their bicycle or walk to Town or will park in a larger parking lot. He noted that if parking is important to people, they will patronize the businesses that have parking. Chair Blakaitis noted that they can also park in the larger parking lots and walk to the businesses that don't have as much parking. He noted that it happens in a lot of towns. Vice Chair Murray thought it isn't an issue that the Board needs to deal with. Member McKeithan disagreed, noting that parking is a huge issue. He pointed out that before an establishment is granted permission, they have to show that they have adequate parking to accommodate the additional vehicles that will be generated.

Chair Blakaitis reiterated that parking should be discussed at a future meeting. Member McKeithan stated that there are existing regulations regarding parking and the Board is discussing if there should be an exception made for the Village Commercial Development Option. Chair Blakaitis stated that that is the reason why he felt that parking should be removed from the draft ordinance.

Member Cofield reminded the Board that many communities that do not have an issue with parking have public transportation. He noted that Duck does not have public transportation. He stated that to think about the long-term development of Duck, without public transportation and forgetting about parking is a mistake, not considering what the Town needs are now and in the future. Chair Blakaitis stated that Duck still has a problem and that maybe there need to be bigger parking lots. If parking is limited, Member Cofield thought the Town needs public transportation, which will not happen, and he is not suggesting it.

Member McKeithan asked if the parking was taken out of the draft ordinance, would there be a parking requirement in the Village Commercial District. Chair Blakaitis noted that they can still apply the parking regulations as they exist, but it isn't needed in the draft ordinance. Member McKeithan stated that the Town seems to be trying to give Village Commercial businesses a reduction in the existing requirements. Chair Blakaitis and Vice Chair Murray disagreed. Vice Chair Murray stated that it is just for the special exception only. Member McKeithan understood. Vice Chair Murray noted that not every business in Duck applies for parking reductions. Member McKeithan thought there is still a parking requirement formula, and this is giving a reduction to that formula. Vice Chair Murray stated that it isn't across the board. Member McKeithan stated that it is for the Village Commercial District.

Director Heard stated that if the Board eliminated Subsection 3, it will mean that any owner has the right to apply for any amount of parking reduction. He stated that the Planning Board and Town Council will decide whether they meet the criteria, if it would be problematic, and if the reduction is warranted. He stated that it is the reason for the general provisions. He explained that it enables the Board to determine if it will be a safety hazard, cause an issue, or not be consistent with the Town's Vision and Land Use Plan. He stated that the Board has the ability to review applications on a case by case basis. By taking out Subsection 3, the Board will simply remove a limitation on the amount of parking reduction that someone can request. As an extreme example, he added that someone could propose 10 parking spaces where they are required to have 50.

Council Liaison Britt understood that switching it to a special exception makes it a little easier to deny because a conditional use can eventually become an allowed use. Director Heard agreed, adding that it will as long as there are criteria.

Vice Chair Murray stated that the Board needs to be careful about the wording it uses. He pointed out that it is not changing the ordinance for the Village Commercial District as a whole, it is just the wording for the special exception option that people have to make the application. He stated that if none of the guidelines are in place, then the status quo will be maintained, which according to Council Liaison Britt, isn't a disaster, but just something the Board is trying to adjust.

Member Cofield stated his preference for the Board to look at all of the conditions that it thinks need to be considered for an applicant applying for this type of permit. He stated that if the applicant achieves this and comes back in the future asking for parking under a special exception even though they obtained the Village Commercial Development Option, he didn't think it is the way to do things. Vice Chair Murray pointed out that they are still obtaining a conditional use permit, it would just be a conditional use permit with special exceptions. Director Heard disagreed, noting that it can apply to a conditional use permit, but it can also apply to a use of right that meets most of the standards of the Village Commercial District, but needs some flexibility with some aspect that will not require a conditional use permit.

Vice Chair Murray asked if special exceptions have conditions attached to them. Director Heard stated that they can. He explained that a special exception is similar to a variance and not as strict and formal as the criteria that the State requires for a variance. Vice Chair Murray clarified that when an applicant finishes with the approval process, they will have a special exception with conditions or a conditional use permit plus a special exception with conditions. Vice Chair Murray explained that a conditional use permit has boilerplate conditions. He noted that those boilerplate conditions would have to be in this ordinance, otherwise, there will be mixing and matching, which would be odd. Director Heard stated that with regard to Travis Costin's case, he would have needed a conditional use permit because he has an accessory apartment. Vice Chair Murray asked if he would only have a special exception. Director Heard stated the Mr. Costin would have needed a conditional use permit and a special exception, which could be processed concurrently.

Vice Chair Murray asked if someone is in violation of the conditions in a conditional use permit, but not the special exception or vice versa, that would put someone in violation. He asked if, moving forward, the Board should do this if the applicant applied for a special exception in addition to a conditional use permit. He asked if the Board had to state that if one of the conditions is violating the special exception, it is seen as a violation of the conditional use permit. Director Heard stated that both permits have the same legal standing and the Town can enforce either or both if there are violations of both. Vice Chair Murray asked if someone is approved for a special exception, such as parking relief, and one of the conditions is that they had to have a landscape buffer, if the owner is in violation and had two parking spaces in question, the applicant can state that since no one came to their business they won't use the special exception. He further asked if that is an option for an applicant. He added that it becomes incumbent on the Board when they are putting conditions on a special exception or conditional use permit that one is not doing something for the other. He asked if it is allowed. Director Heard asked Vice Chair Murray if he is referencing conditions on both. Vice Chair Murray stated that there are conditions on a conditional use permit. He thought it is a housekeeping matter.

Chair Blakaitis asked if Section 3 should be left in the draft ordinance or not. He noted that it will need to be worded differently if it was left in. Member Cofield felt it should be left in. Member McKeithan stated that he would leave it in. Chair Blakaitis suggested leaving it in for now and have Director Heard revise the wording. Director Heard stated that he could add the following language: "...only permitted to a maximum..." which would cover both ends of the spectrum. It was *consensus* of the Board to add the suggested language.



Director Heard asked if there were other things that the Board would like to consider. He stated that he will redraft the discussed sections of the ordinance for the Board's next meeting. Chair Blakaitis suggested that the ordinance be redrafted. Director Heard asked if any of the Planning Board members had any thoughts, comments, or changes to other things in the draft ordinance. Chair Blakaitis didn't think there were any. Member Cofield thought the coverage was good. He added that what the Board will need to decide later is a point system. He stated that it could wait until a future meeting as well as some way of trading off various things. It was *consensus* of the Board for Director Heard to come up with something of that nature.

Vice Chair Murray noted that throughout the ordinance it stated that "...Town Council must find..." He asked if there is any need to mention what the Planning Board's role was or if Director Heard explained to applicants why they go before both the Planning Board and the Town Council. Director Heard stated that there is a process laid out for special exceptions that includes the Planning Board. He added that this ordinance itself doesn't need it because the Planning Board is not the deciding body.

### **APPROVAL OF MINUTES**

#### **Minutes from April 10, 2019 Regular Meeting**

Member Cofield moved to approve the April 10, 2019 minutes as presented. Vice Chair Murray seconded.

Motion carried 5-0.

### **OTHER BUSINESS**

None.

### **STAFF COMMENTS**

#### **Summary of May 1, 2019 Council Meeting**

Director Heard gave a short update on the May 1, 2019 Town Council meeting to the Board and the audience.

#### **Project Updates**

Director Heard updated the Board and audience about several Town projects.

### **BOARD COMMENTS**

None.

### **ADJOURNMENT**

Member McKeithan moved to adjourn the meeting. There was no second or vote.

The time was 8:25 p.m.

Approved: \_\_\_\_\_  
/s/ Joe Blakaitis, Chairman